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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

KATIE LANE,)
SARAH RICE and)
RONALD JOHNSON,)
)
Plaintiffs,)
)
v.)
)
TODD F. SIMON and)
STEPHEN E. WHITE, in their official and)
individual capacities,)
)
Defendants.)

Case No. 04-4079-JAR

MEMORANDUM ORDER AND OPINION GRANTING MOTION TO DISMISS

This matter comes before the Court on defendant Todd F. Simon and Stephen E. White’s Motion to Dismiss (Doc. 12). Defendants seek dismissal of plaintiff’s Complaint pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim. The motion is fully briefed and the Court is prepared to rule. For the reasons stated below, the motion is granted.

Background¹

Plaintiff Katie Lane was the Editor in Chief for the *Kansas State Collegian* (the *Collegian*), a daily newspaper providing coverage of general news to the city of Manhattan, Kansas, and the surrounding community, including Kansas State University (KSU). *Collegian* offices are located on the KSU campus and the newspaper is staffed by KSU students. Plaintiff Sarah Rice was also an

¹These background facts are taken from plaintiffs’ Complaint.

editor of the *Collegian* in Spring 2004.²

The *Collegian* is published by Student Publications, Inc. (SPI). For fifteen years, plaintiff Ronald Johnson held the offices of Treasurer and Director of Student Publications at SPI. Johnson's SPI position is in addition to and separate from his employment as a KSU professor in the A.Q. Miller School of Journalism. As Director of Student Publications, Johnson advised the student editors and reporters of the *Collegian*. This role as adviser is intended and designed to allow the student editors to exercise and maintain control over the content of the newspaper. Thus, in accordance with long-standing precedent, the Editor in Chief of the *Collegian* has final authority for publication content, and content decisions rest in the hands of student editors.

During the Spring 2004 semester, criticism arose on campus from student groups regarding the *Collegian's* lack of coverage of certain news events. Two public forums were held on the KSU campus in which administrators, faculty and student leaders of campus groups met with *Collegian* editors. A student led march through the KSU campus called for Johnson's removal from his position at SPI.

On May 7, 2004, defendant Todd F. Simon, the Chairman of the Board of SPI, wrote to defendant Stephen E. White, Dean of the College of Arts and Sciences at KSU, and recommended that Johnson not be reappointed as Director of Student Publications. This recommendation was based, in significant part, on a content analysis of the *Collegian*. The recommendation noted *inter alia* that:

- "Johnson's actions and behavior in dealing with others as the representative of the corporation have been detrimental to the interests of Student Publications,

²The Court granted plaintiffs' oral motion to join Rice as a party plaintiff at the July 14, 2004 hearing on the preliminary injunction in this matter.

of the A.Q. Miller School, and of Kansas State.”

- “News content has fallen below standards that are widely recognized in both professional and college newspapers.”
- “For the period of time from the fall 2000 to the end of fall 2003, the sub par scope and quality of news coverage has been relatively consistent over time.”
- “The Collegian’s content is strikingly different from that of directly comparable student newspapers, looking much like a general interest newspaper rather than a campus publication,” and
- “The Collegian, based upon the news story content of the past four years, has developed a culture where mediocre is acceptable. The newspapers at peer schools, with advisers working under the same guidelines, appear to have different cultures that result in better news coverage.”

In response to Simon’s recommendation, White informed Johnson by letter, that effective May 24, 2004, Johnson would no longer serve as the Director of Student Publications.

Neither Simon nor White consulted the Board of SPI about Johnson’s non-reappointment as Director of Student Publications. The bylaws of SPI provide, however, that: “[i]n the case of split appointments between Student Publications and the A.Q. Miller School of Journalism and Mass Communications, the Board of Student Publications will be appropriately represented in all states of the search and evaluation process.” The bylaws also provide that meetings of the Board shall be held pursuant to notice from the corporate officer holding the position of Chairman that a majority of all Board members shall constitute a quorum, and that “effective action on any business shall be had only upon consent of a majority of all the members.”

The Board of SPI challenged the non-reappointment of Johnson as Director of Student Publications. By a resolution passed unanimously at a May 20, 2004 Board meeting, the Board noted

